

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA §

V. § CRIMINAL NO. 3:06-CR-034-D

JOHN WENTZELL DOWNS §

DEFENDANT'S MOTION IN LIMINE
AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES, the Defendant, JOHN WENTZELL DOWNS, by and through undersigned counsel, and files his Motion in Limine asking the Court to order the United States Government not to sponsor, seek admission of, display, mention, allude to, or discuss within the presence or hearing of the jury, any evidence whether by testimony, documents, or otherwise, about any of the following, unless or until such time as they approach the bench and request a hearing outside the presence of the jury to determine the admissibility of same.

(1) Evidence from any witness concerning any FAA violation or enforcement action against the Defendant or Defendant's companies other than the "Emergency Revocation" action by the FAA.

(2) Evidence from any witness concerning their opinion as to whether Defendant or his company Millennium Propellers, or any of its employees violated any FAA Rule or Regulation unless they are qualified as an expert witness by the Court on the issue and subject.

(3) Evidence from any witness concerning their opinion as to the meaning, or definition, or interpretation of any terms in Title 14, C.F.R. Part 145, Part 43 and Appendix A

to Part 43 of the Aeronautics and Space Section of the Code of Federal Regulation or any other Federal Aviation regulation unless qualified as an expert witness by the Court.

(4) Evidence and/or testimony from any witness about the examination and tear down of the propeller delivered to Juan Fernandez by Millennium on October 5, 2005.

Such evidence and testimony is irrelevant to the charge in the indictment and not admissible in the Government's case in chief.

(5) Any evidence or testimony about the substantive allegations in the FAA complaint upon which the FAA Administrator issued an "Emergency Order of Revocation" revoking Millennium's Air Agency Certificate # NWOR140K on March 29, 2005. Specifically, the defendant offers to stipulate to the fact that after a complaint was filed by FAA against Millennium, its air agency Certificate Number NWOR140K was revoked.

The complaint allegations are hearsay and their prejudicial effect far outweighs their probative value and would be very confusing to the jury. See Federal Rules of Evidence 401, 402, and 403.

(6) Any evidence or testimony concerning Rule 11, F.R.Cr.P., plea negotiations; or any filings or executed documents relating to possible plea disposition of Defendant's pending case.

(7) Evidence or testimony from any witness as to the legal interpretation or meaning of the regulations in 14 C.F.R. 51-193, because such testimony will usurp the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it. This is because the testimony would be stating a legal conclusion.

Further, such evidence is potentially confusing to the jury and possibly mislead the jury from its understanding of the Court's instructions.

WHEREFORE, PREMISES CONSIDERED, undersigned counsel requests that this Honorable Court grant this motion in all things.

Respectfully submitted,

BURLESON, PATE & GIBSON, L.L.P.

/s/ Michael P. Gibson

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COUNSEL FOR DEFENDANT
JOHN WENTZELL DOWNS

CERTIFICATE OF SERVICE

This is to certify that on the 8th day of June, 2007, a true and correct copy of the foregoing motion was delivered by mail and ECF filing to David L. Jarvis, Esq., the Assistant United States Attorney in charge of this case, 1100 Commerce, Dallas, TX 75242.

/s/ Michael P. Gibson

MICHAEL P. GIBSON

CERTIFICATE OF CONFERENCE

This is to certify that on the 8th day of June, 2007, undersigned counsel has conferred with David Jarvis, Esq., the Assistant United States Attorney in charge of this case, and is authorized to state that the Government will respond.

/s/ Michael P. Gibson

MICHAEL P. GIBSON